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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/599,139

12/07/2006

David J. Ross

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EXAMINER

DEXTER, CLARK F

ART UNIT

PAPER NUMBER

3724

MAIL DATE

DELIVERY MODE

06/21/2011

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,139	Applicant(s) ROSS ET AL.	
	Examiner CLARK F. DEXTER	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) 5-39 and 41 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 40 and 42-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on September 7, 2010 has been entered.

Claim Objections

2. Claim 4 stands objected to because of the following informalities:

In claim 4, line 2, "the projected cut" is not sufficiently clear and "the" should be changed to --a--.

Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 1-4 and 42-45 are rejected under 35 U.S.C. 103(a) as being unpatentable Isaac, pn 2,264,840 in view of Fladgard et al., pn 5,993,303.

Isaac discloses a device with almost every structural limitation of the claimed invention including:

- a body (e.g., 30 and/or 31); and
- a cutting assembly mounted on the body and comprising first and second relatively moveable cutting members (e.g., 11, 12) each defining a cutting edge and an inner face, the first and second cutting members adapted to permit cooperation between the respective cutting edges to cut by a shearing action along a line of cut while maintaining the inner faces in non-engaging relationship to provide clearance therebetween (e.g., as shown in Figs. 3-6), wherein the first and second cutting members are arranged to pivot relative to each other about a pivot axis (e.g., at 25) which is offset from the line of cut (e.g., the "offset" limitation is fully capable of being

performed by the device of Isaac when the device is used in such a manner, such as with the device used at an angle/orientation so that the pivot 25 is raised above the cutting members);

wherein the cutting assembly further includes a guide portion (e.g., see Figs. 1 and 2) to assist in controlling the splay of the cast material as it is being cut

[claim 2] wherein the first and second cutting members of the cutting assembly are arranged such that during a cutting operation the cutting edges are aligned with a projected cutting plane;

[claim 3] wherein the inner face of at least one of the cutting members is inclined outwardly from a projected cutting plane in order to provide clearance between the inner faces when the cutting assembly is operated;

[claim 4] wherein the inner face of each cutting member is outwardly inclined from the projected cutting plane in order to provide clearance between said faces when the cutting assembly is operated;

[claim 42] wherein the pivot axis is located substantially above the line of cut (e.g., when the cutting device of Isaac is used in such an orientation);

[claim 43] wherein the pivot axis is located substantially below the line of cut (e.g., when the cutting device of Isaac is used in such an orientation);

[claim 44] wherein the location of the pivot axis permits the transport of material under the pivot axis, without the pivot axis passing through the material (e.g., when the cutting device of Isaac is used in such an orientation);

[claim 45] further comprising a support member (e.g., 27; or 28) wherein the first cutting member (e.g., 11; or 12) is rigidly mounted on the support member and the second cutting member (e.g., 12; or 11) is pivotally mounted on the support member.

Isaacs lacks:

[from claim 1] a motor disposed in the body, the cutting assembly being driven by the motor.

However, the Examiner takes Official notice that it is old and well known in the art to provide a motor for driving a pair of shears, wherein a motor provides various well known benefits including automation of the cutting device to eliminate or at least reduce fatigue. Fladgard et al. provides one example of such a motor. Therefore, it would have been obvious to one having ordinary skill in the art to provide combine the teachings of Isaac and Fladgard to provide a motorized shearing device to gain the well known benefits including that described above.

5. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Isaac, pn 2,264,840 in view of Fladgard et al., pn 5,993,303.

Isaac discloses a device with almost every step of the claimed method including: providing a cast cutter including:

a body (e.g., 30, 31);

a cutting assembly mounted on the body and comprising first and second relatively moveable cutting members (e.g., 11, 12) each defining a cutting edge and an inner face, the first and second cutting members adapted to permit cooperation between the respective cutting edges to cut by a shearing action

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along a line of cut while maintaining the inner faces in non-engaging relationship to provide clearance therebetween (e.g., as shown in Figs. 3-6), wherein the first and second cutting members are arranged to pivot relative to each other about a pivot axis which is offset from the line of cut (e.g., the "offset" limitation is fully capable of being performed by the device of Isaac when the device is used in such a manner, such as with the device used at an angle/orientation so that the pivot 25 is raised above the cutting members);

a guide portion (e.g., see Figs. 1 and 2) forming part of the cutting assembly;

the guide portion being operative to assist controlling the splay of the case material as it is being cut.

Isaac lacks the application of the device to cut a cast including the steps of: manipulating the cast-cutter to position a cast material to be removed from a patient between the first and second cutting members; and

activating the cast-cutter to cause relative movement of the first and second cutting members to cause the cast material to be cut by cooperation of the cutting edges.

However, the Examiner takes Official notice that using shears to cut a cast is old and well known in the art and that shears in general are used to cut the material of a cast to remove the case or undesired portions of the cast. Numerous examples of such a use are widely known. Further, the use of the particular type of shears disclosed by Isaac, namely tin snips, would have been when facing the problem of cutting a cast with

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only those shears available. Therefore, it would have been obvious to one having ordinary skill in the art to perform the method of cutting a cast with the shears of Isaac for well known reasons including those discussed above.

Isaacs further lacks:

[from claim 1] a motor disposed in the body, the cutting assembly being driven by the motor.

However, the Examiner takes Official notice that it is old and well known in the art to provide a motor for driving a pair of shears, wherein a motor provides various well known benefits including automation of the cutting device to eliminate or at least reduce fatigue. Fladgard et al. provides one example of such a motor. Therefore, it would have been obvious to one having ordinary skill in the art to provide combine the teachings of Isaac and Fladgard to provide a motorized shearing device to gain the well known benefits including that described above.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CLARK F. DEXTER whose telephone number is (571)272-4505. The examiner can normally be reached on Monday, Tuesday, Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer D. Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Clark F. Dexter/
Primary Examiner, Art Unit 3724**

cf
June 19, 2011